CF0000057666

(2)

Single Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH : AT JABALPUR.

CR. APPEAL NO. 988 OF 1989.

abated C.Odt. 22-7-05

1. ~~Ramwatibai~~ wife of Bhukhanlal Chandrakar, aged 50 years,

2. Ramshilabai wife of Bhukhanlal Chandrakar, aged 20 years,

abated C.Odt. 22-7-05

3. ~~Kejuram~~ s/o ~~X~~Ghasiram Chandrakar aged 55 years,

All R/o Bemcha P.S. Mahasamund Distt. Raipur (MP).

.... APPELLANTS (IN JAIL)

Vs.

The State of Madhya Pradesh .... RESPONDENT.

CR. APPEAL UNDER SEC. 374(2) OF THE CR.P.C.

(34) (40)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.988/1989

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Ramshila Bai

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

PRESENT: -

Shri J. K. Shastry, learned counsel for the appellant.
Shri Ashish Shukla, G.A./Addl. Public Prosecutor for the State.

ORAL JUDGMENT
(Delivered on 30-03-2006)

This appeal is directed against the judgment dated 05-10-1989 delivered by Shri K.L.Kori, Ist Additional Sessions Judge, Raipur in Sessions Case No.256/1986 whereby the appellant was convicted under Section-498-A & 307 of IPC and was sentenced to undergo rigorous imprisonment for 3 years & 5 years respectively.

2. Briefly stated the prosecution story is that Kunti Bai PW-9 was married to one Gendu Ram in the year-1990. Ramshila Bai is the sister of Gendu Ram. Kunti Bai did not like Ramshila Bai coming to stay with them. She had gone with Ramshila Bai to Village-Bemcha where the parents of Ramshila Bai resided. Ramshila Bai was annoyed on this behaviour of Kunti Bai. It is alleged that on 05-05-1986 at about 08.30 P.M., the appellant Ramshila Bai threw kerosene on the body of Kunti Bai while co-accused Ramvati and Keju Ram set her on fire. Kunti Bai sustained 35 to 40% burn injuries. Kunti Bai was admitted in the hospital at Mahasamund and thereafter she was further shifted to D.K.Hospital, Raipur. One Shri J.Ekka, Executive Magistrate recorded the statement of

Kunti Bai in the hospital and on that basis F.I.R. was registered on 08-05-1986 at Mahasamund under Section-498-A & 307 of IPC. After completion of investigation, the appellant Ramshila Bai and co-accused Ramvati Bai & Keju Ram was prosecuted under Section-498-A & 307 of IPC. Charge was framed against the appellant as well as against the co-accused Ramvati Bai & Keju Ram under Section-498-A & 307 of IPC. The appellant as well as co-accused Ramvati Bai & Keju Ram abjured their guilt. The prosecution examined 13 witnesses in support of its case. The appellant Ramshila Bai pleaded innocence in defence but led no evidence. The trial Judge relying upon the evidence led by the prosecution convicted and sentenced the appellant as well as co-accused Ramvati Bai & Keju Ram as shown in para-1.

3. Co-accused Ramvati Bai expired on 15-06-1991 and Keju Ram expired on 19-09-1995 as is apparent from the order dated 22-07-2005 in this case. Learned counsel for the appellant Ramshila Bai argued that the evidence led by the prosecution does not establish the guilt against the appellant Ramshila Bai under Section-498-A & Section-307 of IPC. Independent witness Tulsi Ram PW-2, who is alleged to have extinguished the fire, had stated that Kunti Bai had told him that while she was cooking food, her saree suddenly caught fire. It was also argued that the statement of Parvati Bai PW-4 in para-1 is directly contradicted by Kunti Bai PW-9 in para-16 & 17 wherein she has stated that she did not give any statement to anyone about the occurrence while she was hospitalized. The statement of Executive Magistrate, who is alleged to have recorded the dying declaration of Kunti Bai, was not recorded by the prosecution. Lastly, it was contended that so far as the allegation of setting Kunti Bai on fire is concerned even

according to the testimony of Kunti Bai, the appellant Ramshila Bai had not set her on fire but had merely thrown kerosene over her. It was also pointed out that no charge under Section-34 of IPC was framed against the appellant. On these grounds, it was contended that the conviction and sentences awarded by the trial Judge deserve to be set aside. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

4. There is no specific allegation of harassment by the appellant Ramshila Bai, who often used to reside in Village-Bemcha with her parents. Kunti Bai PW-9 has stated that the appellant Ramshila Bai was married to her brother Bhukhan who lived in Bhilai and Ramshila Bai always used to visit and stay with them which she did not like. In her testimony, there is absolutely nothing to show that any act of cruelty was committed by Ramshila Bai towards Kunti Bai. Thus, the offence under Section-498-A of IPC is not established at all against the appellant Ramshila Bai.

5. So far as the offence under Section-307 of IPC is concerned, Investigating Officer, Deputy Superintendent of Police, Jeevan Nagesh PW-13 has in his report vide Ex.P-11 stated that Kunti Bai had sustained fire since all of a sudden *Chhena* (dry cow dung) had suddenly caught fire. The testimony of Parvati Bai PW-4 that Kunti Bai had told her in the hospital that Ramshila Bai had set her on fire while she was sleeping is wholly unreliable since Kunti Bai herself did not make any such statement that she was set on fire while she was sleeping in para-16 of her testimony. She also stated that during her hospitalization she did not tell anyone as to how she had caught fire on the date of occurrence.

6. Tulsi Ram PW-2 an independent witness stated that upon hearing noise he went to the house of Kunti Bai at Village-Bemcha and saw that Kunti Bai was ablaze. After he extinguished the fire Kunti Bai had told him that while she was cooking food suddenly her saree had caught fire. This witness has specifically stated that Kunti Bai did not tell him that the appellant Ramshila Bai had set her on fire. Ram Ratan PW-1 is the Village-Panch who has also stated that on reaching the house of Kunti Bai, Kunti Bai had told him that while she lit the match stick, her Terricot saree caught fire. In the light of above facts and circumstances of the case, the testimony of Kunti Bai that Ramshila Bai had thrown kerosene over her body is rendered wholly unreliable. As a matter of fact Kunti Bai PW-9 has herself not stated that Ramshila Bai had set her on fire.

7. Having thus considered the evidence led by the prosecution in its entirety and also in the abovementioned facts and circumstances, the testimony of Kunti Bai PW-9 that Ramshila Bai had thrown Kerosene on her person is rendered wholly unreliable and unworthy of credit. Conviction of the appellant Ramshila Bai under Section-498-A & 307 of IPC therefore deserves to be set aside.

8. In the result, the appeal is allowed. Conviction of the appellant Ramshila Bai under Section-498-A & 307 of IPC and the sentences awarded thereunder are set aside. The appellant is acquitted. Her bail bonds are cancelled.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane